

Application No. 09/878,707  
Amendment dated September 24, 2007  
Reply to Office Action of June 22, 2007

**AMENDMENTS TO THE DRAWINGS:**

The attached sheets of drawings includes changes to Figs. 2A, 2B, 3A and 3B. These sheets, which includes Figs. 2A, 2B, 3A and 3B, replace the original sheets including Figs. 2A, 2B, 3A and 3B.

Attachment: 4 Replacement Sheets

## **REMARKS**

### **Status Of Application**

Claims 1-19 are pending in the application; the status of the claims is as follows:

Claims 1-19 are provisionally rejected under 35 U.S.C. § 101 under double patenting.

Claims 1-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over PriceDrive.com features, capabilities and/or characteristics of PriceDrive (“PriceDrive.com features”).

### **Drawings**

Informal annotated drawings for Figures 2A, 2B, 3A, and 3B were filed on April 9, 2007. Formal Replacement drawings for Figures 2A, 2B, 3A, and 3B are being submitted herewith.

### **Objection to the Title**

The objection to the title of the invention as not being descriptive is noted. However, applicants respectfully disagree with the Examiner’s assertion that the title is not descriptive. The invention determines where sufficient demand exists and creates a market based on that analysis. Therefore, the title “SYSTEM AND METHOD FOR CREATING A DEMAND-DRIVEN MARKET THROUGH A NETWORK MARKET MAKER SYSTEM” is fully descriptive. Accordingly, reconsideration and withdrawal of the objection is respectfully requested.

### **35 U.S.C. § 103(a) Rejection**

The rejection of claims 1-19 under 35 U.S.C. § 103(a), as being unpatentable over PriceDrive.com features, is respectfully traversed based on the following.

PriceDrive.com purports to show a “Smart Score Technology” that “monitors the inventory levels, days supply of inventory, sales history and market conditions to determine which dealers have the highest probability of selling the vehicle for the most profit in the shortest amount of time.” This purports to allow the seller to identify the dealers having the highest demand at any given time for a specific vehicle. However, in none of the PriceDrive.com references is any suggestion to aggregate Smart Score data.

Hall shows a system for keeping a variety of auto inventory information. It can determine for a dealer a “To Do List” that includes determining a desired inventory level ([0048]). For example, claim 24 provides:

24. A method of claim 22, wherein the number of current day supply vehicles is a number of days it takes a dealership to sell its inventory based on at least one of the dealership’s sales history, the dealership’s current inventory, the dealership’s supply of vehicles, or an amount of money that is tied up in the dealership’s inventory.

Claim 22 states that the to-do list contains data on the dealer’s situation including “number of current day supply of vehicles.” In addition, Hall suggests that data from the dealer management systems can be retrieved and made available to other users of the system. However, Hall does not show or suggest providing the To Do List information to any user other than the dealer using that To Do List. In addition, even though there is no suggestion to aggregate the desired dealer inventory information in any way.

In contrast to the cited references, claim 1 includes:

for each dealer, *determining a current individual dealer demand* for one or more of said product classes based on said dealer inventory information and the inventory profile of said dealer;  
*determining an aggregate dealer demand* for said respective product classes by combining the current individual dealer demand amounts of the dealers having a demand for the respective product classes,  
for each of said product classes, *determining market making potential of said product class* by comparing the corresponding aggregate dealer demands of said product classes to a threshold set of values for determining

the ones of said product classes which have said demand exceeding said threshold values,

*determining if sufficient supply of the product exists* for each of said determined product classes to create a demand-driven market by identifying potential suppliers of the product classes having market making potential, *scheduling a demand-driven market* for each of the product classes having market making potential if the aggregate dealer demand is greater than the demand threshold and where sufficient supply has been determined;...  
(italics added)

Neither PriceDrive.com nor Hall shows or suggests anything other than determining the demand of individual dealers. In addition to identifying current individual dealer demand, claim 20 includes determining the aggregate dealer demand by combining individual dealer demand, determining if the aggregate dealer demand is above a threshold, determining if sufficient supply exists and scheduling a demand-driven market if all of these determinations are positive. The cited references do not show or suggest any of these steps. This method allows a supplier to maximize the sales yield and price because overall demand for the supplier's product at a demand driven market is maximized and a number of dealers with high demand for the product are identified and made part of the market.

Of importance, even though both references calculate individual dealer demand and both references provide some aggregate data, neither reference shows or suggests determining an aggregate dealer demand. This is strong evidence that doing so was not obvious to one skilled in the art. To support a *prima facie* case for obviousness, the references, singularly or in combination, must show or suggest every limitation of the claim. MPEP § 2143.03. There is no suggestion in the cited references to determine an aggregate demand. In addition, the fact that both references provide aggregate data of some type and still fail to suggest determining aggregate demand is strong evidence against obviousness. Therefore, the cited references do not support a *prima facie* case for obviousness of claim 1 and claim 1 is patentably distinct from the prior art. Claims 2-10 are dependent upon claim 1 and thus include every limitation of claim 1. Therefore, the cited references do not support a *prima facie* case for obviousness of claims 2-10 and claims 2-10 are also patentably distinct from the prior art.

Also in contrast to the cited references, claim 11 includes:

for each said dealer, *determining a current individual dealer demand* for one or more of said product classes based on said dealer inventory information and an inventory profile of said dealer, said inventory profile including the number of at least one product class among said plurality of product classes each of the plurality of dealers optimal stocking level based on a typical sales rate for that dealer for the class of product,  
*determining aggregate dealer demand* by aggregating said demands respectively for said product classes,  
collecting supply information from said suppliers for a plurality of said product classes;  
for each of said product classes, *determining market making potential of said product class* by comparing the corresponding supply and demand to a threshold set of values for determining the ones of said product classes which have said supply and said demand exceeding said threshold values,  
*scheduling a market for each of the product classes* that are determined to have market making potential, ...

As noted above, the cited references do not show or suggest anything other than determining the demand of individual dealers. In addition to identifying current individual dealer demand, claim 1 includes determining the aggregate dealer demand, determining if the aggregate dealer demand is above a threshold, determining if the corresponding supply and demand is greater than threshold values and scheduling a demand-driven market if all of these determinations are positive. There is no suggestion in the cited references to determine an aggregate demand. In addition, the fact that both references provide aggregate data of some type and still fail to suggest determining aggregate demand is strong evidence against obviousness. Therefore, the cited references do not support a *prima facie* case for obviousness of claim 11 and claim 11 is patentably distinct from the prior art. Claims 12-19 are dependent upon claim 11 and thus include every limitation of claim 11. Therefore, the cited references do not support a *prima facie* case for obviousness of claims 12-19 and claims 12-19 are also patentably distinct from the prior art.

Accordingly, it is respectfully requested that the rejection of claims 1-19 under 35 U.S.C. § 103(a) as being unpatentable over PriceDrive.com features, be reconsidered and withdrawn.

**Double Patenting Rejection**

The provisional rejection of claims 1-19 under the judicially created doctrine of double patenting over claims 20-46 of co-pending Application Serial No. 11/489,330, is respectfully traversed based on the following.

It is noted that section 804.02 of the MPEP states that:

A rejection based on a non-statutory type of double patenting can be avoided by filing a terminal disclaimer in the application or proceeding in which the rejection is made.

and further that:

The filing of a terminal disclaimer to obviate a rejection based on non-statutory double patenting is not an admission of the propriety of the rejection.

Accordingly, a terminal disclaimer prepared and executed in accordance with section 1490 of the MPEP will be provided when this application is otherwise ready for issuance of a notice of allowance.

According, the provisional rejection of claims 1-19 under the judicially created doctrine of double patenting over claims 20-46 of co-pending Application Serial No. 11/489,330, be reconsidered and withdrawn.

**CONCLUSION**

Wherefore, in view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and an early reconsideration and a Notice of Allowance are earnestly solicited.

This Amendment does not increase the number of independent claims, does not increase the total number of claims, and does not present any multiple dependency claims.

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Accordingly, no fee based on the number or type of claims is currently due. However, if a fee, other than the issue fee, is due, please charge this fee to Sidley Austin LLP Deposit Account No. 18-1260.

If an extension of time is required to enable this document to be timely filed and there is no separate Petition for Extension of Time filed herewith, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed.

Any other fee required for such Petition for Extension of Time and any other fee required by this document pursuant to 37 C.F.R. §§ 1.16 and 1.17, other than the issue fee, and not submitted herewith should be charged to Sidley Austin LLP Deposit Account No. 18-1260. Any refund should be credited to the same account.

Respectfully submitted,

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